

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KELSEA S. SMITH,

Petitioner,

v.

Case No. 19-CV-161

WARDEN BRIAN FOSTER,

Respondent.

ORDER ON THE PETITION FOR A WRIT OF HABEAS CORPUS

Kelsea S. Smith, who is incarcerated pursuant to the judgment of a Wisconsin Circuit Court, filed a petition for a writ of habeas corpus. (ECF No. 1.) He asks the court to permit him to proceed without prepaying the \$5.00 filing fee. (ECF No. 2.) Based upon the information contained in his affidavit, that motion is **granted**.

The court must now review Smith's petition in accordance with Rule 4 of the Rules Governing Section 2254 Cases states:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Having reviewed the petition, the court is unable to say that it is plainly apparent that Smith is not entitled to relief. Therefore, the respondent shall answer the petition.

The Clerk of Court shall promptly serve the respondent by service of a copy of the petition and this order upon the State of Wisconsin Attorney General. Within **60 days** of the date of this order the respondent shall either answer the petition in accordance with Rule 5 of the Rules Governing Section 2254 Cases or file a motion to dismiss. An optional supplemental brief in opposition to the petition may be filed along with the answer to the petition.

Within **28 days** of the respondent's answer or motion to dismiss Smith shall submit a brief in response. In the event the respondent files a motion to dismiss, the respondent shall have **14 days** from Smith's response in which to file a reply.

Unless the court determines that additional proceedings are necessary, that will conclude the briefing. The court will then resolve the petition on the written record.

SO ORDERED.

Dated at Milwaukee, Wisconsin this 11th day of February, 2019.


WILLIAM E. DUFFIN
U.S. Magistrate Judge